

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OCEAN TOMO, LLC,

Plaintiff,

v.

JONATHAN BARNEY and
PATENTRATINGS, LLC,

Defendants.

No. 12 C 8450

Hon. Thomas M. Durkin

Hon. Mary M. Rowland

Document electronically filed

**PLAINTIFF AND COUNTER-DEFENDANT OCEAN TOMO, LLC'S
MOTION FOR CONTINUANCE OF TRIAL DATE**

Plaintiff Ocean Tomo, LLC ("Ocean Tomo") moves for a continuance of the trial date from its currently scheduled start date of June 26, 2017 to the start date provided by the Court of September 25, 2017. Defendants do not consent to this motion. In support of its motion, Ocean Tomo states as follows:

1. The parties have previously indicated to the Court that trial in this case is expected to last approximately two weeks.

2. The parties attended a status hearing with the Court on May 31, 2017. At that hearing, the Court informed the parties that in addition to another matter previously known to the Court that would interfere with the trial on June 30, 2017, the Court would have to handle a criminal trial scheduled for the week of July 5, 2017. As a result, if the parties began a jury trial on June 26, 2017, there would be a 10-day gap in the trial from June 30, 2017 until the trial could

resume on July 10, 2017. That break would include the four-day holiday weekend of July 1-4, 2017.

3. Because the parties anticipate a two-week trial, it is likely that the bulk of plaintiff Ocean Tomo's case would be presented before the 10-day break, and then all of Defendants' case would likely be presented continuously after the break.

4. The 10-day break therefore would significantly prejudice Ocean Tomo, as the jury would likely forget the majority of Ocean Tomo's case-in-chief over the 10-day break including a long holiday weekend, while Defendants would retain the ability to present their entire case immediately before jury deliberations.

5. The 10-day break also introduces significant hardships for potential jurors, skewing the juror pool towards individuals who are available from June 26-29 and then again from July 10-17, rather than jurors who can be available for two continuous weeks of trial.

6. The Court may grant a continuance of trial for good cause. Fed. R. Civ. P. 16(b)(4); *WAIT Radio v. Century Broadcasting Corp.*, No. 85 C 7579, 1989 U.S. Dist. LEXIS 12364, at *4-*5 (N.D. Ill. Oct. 12, 1989).

7. In particular, "where a trial court's own action causes the need for a continuance and the court then denies the continuance, resulting in prejudice to a party, courts have generally found an abuse of discretion." *Smith v. Ford Motor Co.*, 215 F.3d 713, 722 (7th Cir. 2000) (citing *Fowler v. Jones*, 899 F.2d 1088, 1095-96 (11th Cir. 1990); *Fenner v. Dependable Trucking Co., Inc.*, 716 F.2d 598, 602 (9th Cir. 1983)). Though the Court certainly did not have a choice in handling a criminal trial interfering with this civil trial, the fact remains that the criminal trial scheduled for the week of July 3, 2017, will cause prejudice to Ocean Tomo and is not Ocean Tomo's fault.

8. The alternative date offered by the Court of September 25, 2017, will result in only a three-month delay of trial, causing no prejudice to either party.

9. Ocean Tomo therefore respectfully requests that the Court grant its motion for a continuance of the trial date for good cause, and reset the trial date for September 25, 2017.

10. Ocean Tomo requests expedited consideration of this motion due to (1) imminent deadlines for cancellation and refunds of costs associated with trial such as hotel and flight reservations, and (2) imminent pre-trial deadlines of June 9, 2017, for filing of motions *in limine* and *Daubert* motions, and of June 16, 2017, for filing of the parties' joint pretrial memorandum.

Dated: June 6, 2017

Respectfully submitted,

/s/ William Cory Spence

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2017, a copy of the foregoing was served on counsel of record by electronic means pursuant to the court's Electronic Case Filing (ECF) system.

*/s/ William Cory Spence*_____